

Present were: Anderson (Chair); McDonough (Clerk); Jeton and Brown (Members); Matey (Associate Member).

The meeting opened at 7:10 p.m.

Petition No.: 3911

Premises affected: 34-36-38 Dale Street

Petitioner: Holmes/Richards

Members: Anderson, McDonough, Jeton, Brown, Baime (absent)

Tyler Richards represented himself & his fiancée, Donna Holmes, in the continued public hearing. They submitted construction & foundation plans & a plot plan, as requested by the Board at the last hearing. Tyler noted that a second floor overhang shown on the previous plans has been removed, thus decreasing the overall size of the alterations, and that the engineer did not mention any structural issues. The architectural floor plans were created by Mr. Richards. Anderson reminded the Board that the requested relief includes a special permit &/or variances for the partial demolition of an existing 3-family dwelling and for additions & alterations, as well as off-street parking. McDonough made a motion to close the public hearing. Jeton seconded the motion & the Board voted (4-0) to close the public hearing. The Board then proceeded to deliberate the case. McDonough made a motion to approve the requested variances &/or special permits as necessary to accommodate the plans submitted tonight (prepared by FEI Engineering, dated 2-28-11, sheet 1 of 1). Jeton seconded the motion. The Board voted (3-1) (Brown opposed). Anderson noted that since Baime is not present, the Board can postpone until the next meeting or take a courtesy vote. Brown reminded the Board that at the last public hearing the Board voted (4-1) & that he opposed it due to the insufficient documentation in the package. He stated that he appreciates the structural work & the change Richards noted to the second floor wing, but still has concerns for the off-street parking on the very small lot with very close abutters. He reaffirmed his desire to see a parking plan with better detail of the off-street parking provisions. Anderson asked for a motion to vacate the motion as premature. McDonough made a motion to vacate the motion. Jeton seconded the motion & the Board voted (4-0) to vacate the motion. Brown then made a motion to reopen the public hearing. McDonough seconded the motion & the Board voted (4-0) to reopen the public hearing. Anderson asked for a motion to table the matter until it is determined if Baime can attend tonight for this case alone. McDonough made a motion to table the matter until it is determined if Baime can attend for this case tonight. Jeton seconded the motion & the Board voted (4-0) to table the matter until it is determined if Baime can attend tonight for this matter alone.

After the Board closed the hearing for 9 Wildwood Rd, they returned to this case.

The Secretary informed the Board that Baime was unable to attend tonight's meeting. Anderson asked the petitioners if they wish to continue to the next regular meeting or go with the 3-1 vote. Mr. Richards offered a parking plan depicting four parking spots. He recited the dimensions & explained that the parking spots will have crushed stone until the project is done, after which they will be paved. Jeton asked about the status of the large tree in the front yard. It will be removed due to roots invading the sewer line. Anderson explained that if the petitioners choose to proceed with a vote tonight, they will need a unanimous (4-0) vote or they can choose to continue until 4/7/11 for Baime to participate under the Mullen Rule. Richards opted to continue to the meeting rather than risk having to wait two years to reapply if denied. Anderson asked for another extension and explained that at the next meeting everything would have to be discussed anew. Brown asked specifically what was going to be done related to screening/landscaping the parking spaces depicted on the parking plan. Anderson asked for a motion to continue the public hearing from 7 p.m. this evening to the next regularly scheduled meeting on April 7th. McDonough made the motion & asked to speak to the motion. Richards opted to continue to 4/7/11. Anderson requested an extension to file the decision in light of the continuance & declared for the record that all matters discussed on this case tonight did not happen & will be discussed anew at the 4/7/11 meeting at which the 5<sup>th</sup> member will be present, having exercised & abided by the Mullen Rule. Brown asked to see an indication of what is not in the package, particularly the landscape screening.

Anderson asked for a motion to continue to 4/7/11. McDonough made such a motion & it was seconded by Jeton. McDonough asked to hear the conditions Brown might impose if he were persuaded to vote in favor of the project. Anderson suggested saving the discussion until 4/7/11 for Baime to hear first hand, but left it up to the petitioners to decide. The petitioners agreed to hear Brown's suggested conditions. Brown voiced his concern about the 'parking lot look', the delineation between parking spaces, front doors and landscaping. Anderson asked the petitioners if they wanted to proceed tonight. Richards pointed out that they had submitted a color-coded parking plan depicting landscaped areas with the application. Anderson noted the documents submitted tonight: structural plan, certified plot plan by Clorelle Associates dated 2/16/11 & the parking plan. Richards pointed out that anything not designated as parking on the plan is landscaping &/or walkways. Brown requested that a fence along the right side lot line and professional landscaping be installed. McDonough made a motion to withdraw the motion to continue to 4/7/11. Brown seconded the motion & the Board voted unanimously to withdraw the motion to continue to 4/7/11. Richards indicated to the Board that they wish to proceed with a vote tonight with a 4-member Board. Brown made a motion to close the public hearing. McDonough seconded the motion & the Board voted unanimously (4-0) to close the hearing. The Board then proceeded to deliberate. Previously this evening there was a motion to approve the variance and the special permit to authorize the project as shown on the structural plan & certified plot plan with the condition that areas not covered by building or parking as shown on the certified plot plan either be professionally landscaped & the applicant consider installing a fence along the lot lines to screen abutting properties. McDonough made the motion. There was no second to the motion. Anderson suggested instead a motion to approve with the condition requiring the installation of a fence at least 4' tall substantially along the northerly boundary and to screen the parking areas along the right side along with other conditions for professional landscaping in accordance with all materials submitted, minus the section of the second floor detailed earlier tonight. McDonough made the motion & Brown seconded it. Brown feels the condition for landscaping, not 'professional' landscaping, such that the areas no designated for parking are rendered unsuitable for parking. Anderson suggested that the condition state that non-parking areas be planted & maintained in a manner in a landscaped manner. The Board voted (4-0) to grant the requested relief with the aforementioned conditions. Brown will write the decision.

Petition No.: 3919

Premises affected: 9 Wildwood Rd

Petitioner: Grenon & Fortier

Members: Anderson, McDonough, Jeton, Matey, Brown

Jean Francois Grenon represented himself & his wife in their request for a variance &/or a special permit to allow additions & alterations that will not meet the minimum front or side setback requirements. The additions & alterations will be closer to the street and side lot line than the existing house already is located. The front addition is an expansion of the front entryway to each side and the side addition is a two-story addition to include a music studio. The Board inquired about whether lessons will be taught in the studio. They will, on a one-on-one basis, but it will also be used for Ms. Fortier to practice. Grenon pointed out that the proposed locations were chosen due to the wetlands on their property. They have already received approval from the Conservation Commission. Conservation Director Robert Douglas has submitted an email relaying their approval to the ZBA. The Board voiced concern for the bump out 6" toward the street which increases the non-conformity. Grenon noted that part of the reason for the project is to fix structural failures in the existing house. Mr. Pratt, an abutter, stated he had no objection. Grenon also informed the ZBA that the abutters across the street were in favor of the project. The Board waived a site view. McDonough made a motion to close the public hearing. Brown seconded the motion & the Board voted (5-0) to close the public hearing. The Board then proceeded to deliberate. Brown noted that the house was built in 1954 at which time the minimum front setback requirement was 30'. With the exception of the proposed front entry addition encroaching into the 30', the house is pre-existing, non-conforming. The Board discussed the increase in the non-conforming nature of the house with the proposed front entryway and that the project could be constructed under a special permit as long as the additions/alterations did not come any closer toward the front lot line than the existing house as depicted on the plot plan submitted with the application. McDonough made a motion to approve the special permit with the condition that the additions/alterations not be constructed

any closer than the existing house. Matey seconded the motion & the Board voted (5-0) to grant the special permit with conditions. McDonough then made a motion to deny the requested variance since the statutory requirements were not met. Brown seconded the motion & the Board voted (5-0) to deny the variance. Anderson clarified for Mr. Grenon that the additions/alterations can be built pursuant to the special permit granted by the ZBA as long as they do not extend any closer to the front lot line than the existing house. Brown will write the decision.

Petition No.: 3920

Premises affected: 64 Lucerne Dr

Petitioner: Basappa/Renuka

Members: Anderson, McDonough, Jeton, Matey, Brown

Mrs. Renuka represented herself & her husband in their request for a special permit to create a family dwelling unit for her parents within their existing house. The only proposed change is to install a cooking stove. Renuka showed the Board on the plan where the unit would be located. It is currently used as living/play space. She explained that she had approached the Building Division for a permit at which time she was advised to apply to the ZBA. Brown explained that a special permit for a family dwelling unit is usually issued for a 5-year period & restricts occupancy to the family. There were no other questions or comments from the Board or the public. The Board waived a site view. Brown made a motion to close the public hearing. Matey seconded the motion & the Board voted (5-0) to close the public hearing. The Board then proceeded to deliberate. McDonough made a motion to grant the special permit with the usual conditions of 5-year limitation & that only family occupies the unit. Matey seconded the motion & the Board voted (5-0) to approve the special permit with conditions. McDonough will write the decision.

McDonough disclosed that the next petitioner, Mr. Pierre, is her neighbor, but she feels she can participate impartially in the public hearing, if no one objects. There were no objections.

Petition No.: 3921

Premises affected: 28 Park St

Petitioner: JETICO Holdings

Members: Anderson, McDonough, Jeton, Matey, Brown

[Anderson gave McDonough a letter of support for the previous case, 64 Lucerne Dr.]

David Pierre represented himself & his wife, Nancy Angel, principals of JETICO Holdings. They recently purchased a franchise, Orange Leaf Frozen Yogurt, and wish to operate at 28 Park St. They have requested a special permit under section 3.1.3.c. for fast food and a variance from section 5.1.4.c.12.b because they will not be able to meet the minimum off-street parking requirement. Most recently the unit they have leased was a hair salon. Pierre explained that they expect most of their clients to be walk-up business, thus decreasing the need for off-street parking. They will have 2 employees working, except during peak hours & season, at which time a manager or assistant manager will be working with the employees. The busiest time is expected to be lunch & dessert. They will provide 16 seats at some tables as well as stools along the window. Pierre noted that their product is more a take-out item. The Board discussed garbage control (Pierre has spoken with the Board of Health staff & will have his own locked dumpster on site). The trash generated from this business is expected to be minimal (cups, spoons, napkins). The Board then discussed the requested variance for off-street parking. The gross square footage of the unit is 1650 sq. ft., 450 of which will be occupied by equipment and prep area. Brown noted that the bylaw would require 9 spaces for this type of use based on the square footage. He added that there is a Town Meeting warrant article to reduce the requirement. The Board commented on the dilemma of any business opening in the downtown area not having enough off-street parking, as well as existing businesses changing location & not requesting variances from the ZBA for off-street parking. Anderson suggested that the applicant may wish to withdraw the requested variance without prejudice. Other than frozen yogurt &

toppings, the business will sell bottled drinks (but not soda or coffee). Mr. Pierre submitted a history of the Orange Leaf Yogurt franchise to the Board. He also noted the website: [www.orangeleafyogurt.com](http://www.orangeleafyogurt.com). Anderson then asked for a motion to approve the special permit under section 3.1.3.c.12.b to allow a fast food establishment limited to frozen yogurt as described in the franchise materials. McDonough made such a motion with conditions. Matey seconded the motion. Brown suggested the approval be tied to the franchise agreement. Jeton suggested it also specify the number of seats. Anderson pointed out that the business model is for foot traffic, a specific food type, no drive-through, a low intensity establishment, with a specific demographic. Anderson suggested personalizing the special permit to the applicant's business, noting that other businesses are not restricted in this way. The Board then voted (5-0) to grant the special permit for fast food.

Anderson pointed out to the Board that if they were to grant a variance for the off-street parking requirement, it would set a precedent. If they were to deny it, the petitioner may have issues obtaining building permits to open shop, and if no action were taken, it would be constructively granted. Again, Anderson suggested to the petitioner that he may wish to request to withdraw without prejudice. Mr. Pierre requested to withdraw the requested variance without prejudice. He will submit a letter of request. Anderson suggested continuing the public hearing on the variance request until 4/7/11 in order for Mr. Pierre to discuss parking with the Inspector of Buildings, Kaija Gilmore. Pierre informed the Board that he has not yet spoken with the Planning division regarding applying for a special permit for a reduction in off-street parking. Brown made a motion to continue the request for a variance to 4/7/11. Matey seconded the motion & the board voted unanimously to continue the variance hearing to 4/7/11.

#### Discussion Items:

Minutes & Recusals – Anderson suggested the Board create & adopt a policy stating that if a Board Member recuses themselves from a particular hearing and then the minutes for the meeting at which they recused themselves are distributed for approval, under the Conflict of Interest Law it is acceptable for the Board Member to review those minutes. If and to the extent that a recused Board Member participates in the vote/approval of minutes, it does not constitute the recused Board Member participating in the public hearing.

Minutes of 2/3/11, 7 p.m. – Jeton made a motion to approve the minutes of 2/3/11, 7 p.m. meeting. Matey seconded the motion. The Board voted (4-0) to approve the 2/3/11 7 p.m. minutes. Brown did not participate in the approval.

Minutes of 2/3/11, 7:20 p.m. – Matey made a motion to approve the minutes of 2/3/11, 7:20 p.m. meeting. Brown seconded the motion & the Board voted (5-0) to approve the minutes of the 2/3/11 7:20 p.m. meeting.

Minutes of 2/3/11, 8:22 p.m. – McDonough made a motion to approve the minutes of 2/3/11, 8:22 p.m. meeting. Matey seconded the motion & the Board voted (4-0) to approve the minutes of the 2/3/11 8:22 p.m. meeting. Anderson did not participate in the approval.

Anderson added that minutes should reflect recusals &/or members who leave the room as well as include each member sitting on each case. The minutes will also have attached to them a list of documents received at the public meeting.

Petition No.: 3912

Premises affected: 204 Andover Street

Petitioner: T-Mobile

Members: McDonough, Jeton, Matey, Brown

Attorney Jackie Slaga represented T-Mobile in the continued public hearing to install antennas inside an historic cupola replica. McDonough explained that Associate Member Baime was unable to attend & the option to continue with a 4-member Board.

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The Hall, 2<sup>nd</sup> Floor, Memorial Hall Library, Elm Square

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Slaga agreed to proceed with the continued public hearing this evening and to decide at the end regarding the 4-member Board. Since the last meeting Slaga had met with the Ballardvale Historic District Commission. The Board explained that their focus is on safety rather than materials or design. They suggested that if approved, conditions could be placed requiring BVHDC review/approval. Slaga updated the Board on the issue with the lease and what would happen if T-Mobile were to abandon the antennas inside the proposed cupola. The landlord has indicated that they will assume responsibility for the cupola. The lease will be amended to reflect this. The design will mimic the historic photos previously presented to the best of ability as negotiated with BVHDC. The cupola was proposed at 25', but may be reduced to a more appropriate scale for the building. They have hired an engineering firm well versed in historic structures, whose plans will be both architectural & structural for building permit purposes. Slaga submitted the revised drawings with the equipment shelter on the 5<sup>th</sup> floor rather than on the ground floor, a change that came about when they were informed that the building is subject to frequent flooding. Appropriate structural reinforcement will be made to support the equipment on the 5<sup>th</sup> floor. Dianne Derby, Vice Chair of the Ballardvale Historic District Commission (BVHDC) explained the process and timing of their review. She also asked whether access to the cupola would be available after T-Mobile leaves the site. Access will be from inside the building and remain even after T-Mobile leaves. Jeton suggested that the ZBA could act on the current application contingent upon the applicant obtaining BVHDC review. Slaga added that a condition be placed on approval that if there were any changes they would return to the ZBA. She stated that the internal access will be added to the plans. Brown made a motion to close the public hearing. Jeton seconded the motion. Slaga agreed to a 4-member Board. The Board voted unanimously to close the public hearing. The Board then proceeded to deliberate. The Board first discussed the requested relief for a height variance under Section 4.1.3.3.a. Brown made a motion that the requested variance for height does not apply to ornamental features and made a motion to find that the cupola is ornamental and therefore exempt from the height limitation in Section 4.1.3.3.a. Jeton seconded the motion and the Board voted (4-0) to find that the cupola is exempt. Brown then made a motion to deny the requested variance from Section 4.1.2 as moot. Jeton seconded the motion and the Board voted (4-0) to deny the variance as moot. The Board then discussed the requested special permit for wireless. Matey made a motion to grant the special permit from Sections 3.1.3.F.15 and 6.1 to install the roof top mounted wireless communication antennas subject to the following conditions:

1. Applicant must obtain approval from the BVHDC
2. Adequate access from within the building for maintenance must be installed
3. The landlord must revise the lease.

Brown added that the usual findings that a coverage gap exists with peer review support and that the applicant complied with the requirements of the bylaw and seconded the aforementioned motion as amended. The Board voted (4-0) to grant the special permit with conditions. Slaga will draft the decision; submit it to the Secretary to be reviewed by Brown and the rest of the Board. McDonough asked Slaga for an extension to file the decision. Slaga agreed. McDonough then continued the deliberation to April 7, 2011 for review of the draft decision.

The Board then adjourned the meeting at 9:27 p.m.